IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

FIRST APPEAL No.1641 of 1996

Amin G. Shikalgar .. Appellant

V/s

1. The Partner,
Joshi Precision Machines
Bhosari ,Pune -26
2. The Regional Director,
Employees State Insurance
Corporation, Pune ..Respondents

Ms Seema Sarnaik for Appellant
Mr H.V.Mehta for Respondent no.2

CORAM:D.G.DESHPANDE,

DATED:7th March 2005

ORAL JUDGMENT :-

1. Heard learned Advocate for the Appellant and Respondents.

2. This appeal is filed by the original claimant against the order of Employees Insurance Court, Pune dated 30-8-1996. The matter before the Insurance Court was in the form of appeal under Section 54-A

of the E.S.I.Act, 1948 and it was the case of the Appellant claimant or workman that the Appellant was working as a Die Maker in the establishment of the Respondent no.1. During the course of the employment and out of employment, an accident occurred while he was working in a tool on 6-2-1979 at about 12-45 p.m. i.e. afternoon. He received an injury to the left eye. Firstly he was treated at Lokmanya Hospital, Chinchwad and then he was treated under ESI Scheme and he was receiving medical treatment. Appellant was required to go before the E.S.I.Court because he slowly started losing eye sight of his left eye, but Medical Board on examination on 18-8-1979 certified that his permanent final disability being nil hence no compensation can be awarded. therefore he filed the aforesaid application.

3. The Respondent no.2 ESI Corporation filed its written statement and contended that though the Appellant was working with Respondent no.1 as Die Maker and though he suffered accident, he was being given treatment intermittently . The Medical Board found that the Appellant was suffered from Eales's disease to his left eye and it has nothing to do with the injury sustained on 6-6-1979.

. When the matter came up before the lower Court, two issues were framed viz.

i. Does the Appellant prove that the loss of vision of his left eye was due to the employment injury sustained by him on 6-2-1979?

ii.Whether the Appellant was entitled to get review of the decision of the Medical Board regarding the permanent disability to his left eye and to what extent?

4. The lower Court gave the negative findings in respect of both these two issues and rejected the appeal of the Appellant. Hence this appeal.

5. Looking to the facts of the case there is no dispute that the present Appellant was in the employment of the Respondent no.1 at the relevant time; that he suffered injury in the course of employment to his left eye on 6-2-1979. In his evidence the Appellant workman has stated that he has been taking treatment to his left eye from the date of the accident and there is no vision in his left eye and nobody had told him that there was no vision on the left eye on account of any other reason than the accident. He also stated that he applied to the medical Board for re-exmaination but the Board turned down the said request on the ground that there was no provision of re-exmaination by the Medical Board. He was cross examined but absolutely

nothing is brought on record in his cross examination.

6. Thereafter Insurance Inspector was examined on behalf of the Opponents. He produced original report of the Medical report dated 21-8-1979 and 18-8-1979 and did nothing. He was asked whether there was any Ophthalmologists had brought to the notice of the Appellant that he had suffered eales disease.

7. Dr.Anant D. Patwardhan was also examined. He was an eye specialist and was working as Honorary professor of Ophthalmology. He has stated that on 7-8-1980 he had examined the patient. The dignosis is not written on the said case paper, but on the basis of the findings, in his opinion the patient was having Atrophic Bulbli, left eye. In simple language, his eye was Shrunken. There was no pupillary reaction to light and he had trauma one year back following which, he had gradually loss of the vision. He made his assessment at 30%. It was incurable blindness and this witness stated that this disease can be possible on account of injury or purporting injury. He was cross examined on behalf of ESI Corporation. There is absolutely nothing brought on record to create doubt about the integrity of this witness or about his being an expert, he has not been shaken anywhere in his cross

examination. He was asked as to what is eales disease, and the witness stated that eales disease means intraoccular heamorrhage and he has stated that eales disease cannot be a result of occular injury.

8. Then one Dr.Ganpat Pralhatrao Mule, was examined. He was on the Medical Board of ESI for about 10 years. He has stated that case of the Appellant was referred to the panal to assess the permanent disability arising out of the employment injury. On internal examination of the left eye it was found that externally, there were media were bazy, there were vitreous opacities, pupils were sami dialated not reacting to the lights. There was no evidence of any intro-ocular foreign bodies and diagnosis arrived was eales's disease, funds revealed multiple small and big hemorrhages. Eales's disease is not caused by employment injury trauma.

9. In the cross examination, Dr.Mule stated that the Appellant was never reported earlier for his employer injury to his left eye. He then stated that photological examination revealed that some tubercul (T.B.) changes were observed round the blood vessels. He observed that same are attributing as the T.B. ciphitis as a cause, but no

turberical germs or ciphitis are observed. When further cross examined the witness admitted that angiography is also done for the eye examination and there was a test of fluora scil but that type of test was not available in E. S. I. Hospital in the year 1980. He admitted that no Angiography test was carried out in the instant case, but according to him it was not necessary. The witness further admitted that the appellant was referred to him on 18-8-1979 and he was having the employment injury on 6-2-1979. He again stated that on internal and external examination, it does not reveal the presence of any inter ocular foreign body.

10. In this background of evidence the Counsel for the Appellant vehemently urged that when it was proved that the Appellant had suffered an employment injury on 6-2-1979 i.e. while he is working for Respondent, foreign body went in his left eye and therefore he was treated for the same, then if when a short period - say 3-4 months, his vision of the left eye has affected and ultimately he become incapable of seen by left eye then there was a direct nexus in employment injury on 6-2-1979 between his disability. The Advocate for the Appellant also contended that it may be that Respondent no.2 examined two experts but Appellant has also examined one expert and there is no cross of this expert.

11. On the other hand, the Counsel for the Respondents repeated and vehemently urged that eales disease according to two experts is not caused by employment injury trauma and therefore it cannot be said that injury suffered by the appellant on 6-2-1979 during the course of employment was caused.

12. I have given anxious consideration to the submission made by both the Advocates. It is true that in order to succeed in such type of cases, it is for the workman to prove that he suffered injury during the course of employment, but in that regard it has been held that there is a direct nexus between the employment injury suffered by the Appellant on 6-2-1979 and ultimate disability suffered by the Appellant. It appears that two doctors examined by the Respondent no.2 could not find any connection with employment injury and ultimate disability because they did not notice any foreign body i.e. any intro ocular foreign bodies on the left eye. Admittedly the appellant was examined and treated on 6-2-1979 and thereafter, but a fact remained that voiding body has caused injury to the left eye and ultimately this injury resulted in disability.

13. The E.S.I. Act has meant for beneficial legislation and it has to be introduced so as to

benefit the workers. There is an evidence of two sets of experts - one examined by the Appellant and two examined by E.S.I. Corporation.

14. The Counsel for the Appellant submitted a compilation of documents which were forming part of the record of the trial Court. There is a certificate or case paper of Lokmanya Hospital, Chinchwad. The injury that was noted that it was a foreign body on the left eye and treatment given is foreign body removed then in the Discharge Certificate issued by ESI Hospital at Aundh, diagnosis is of retinal hemorrhage. In the report of the Medical Board dated 8-8-1979 or 8-3-1979, the dates are not clear, regarding left eye, it is written left eye - vision 6/24 , media hazy, vision opacities, pupils senidilated not reacting to light. Eales's disease which is nothing to do with the E.I. No corneal opacity. Right eye normal. Then there is a certificate issued by the employer to the Appellant wherein he has stated that the workman Appellant was injured in his left eye while working on a tool. He claims that he cannot see with that eye any more. As he is suppose to do fire jobs like Die making, he is no more capable of giving us services required by him. He may be examined and given due compensation if his claim is valid. Then there are other documents about the treatment but most of them are illegible. There is a accident

report from the Employer under Regulation No.68 - form 16 - wherein the cause of accident column no.12 it is written that he was separate dial punch from pillar set. It appears that in the compilation there is a report about Medical examination of the Appellant of Dr.Deshmukh. He has stated that he has examined the Appellant on 10-10-1995 and again on 11-10-1995 and findings were : left eye vision no. P.L. I.O.T. normal to fingers - cornea a small soor on centre of cornea slightly below the centre. A triangula roor at 6 O'clock position near the correal limbs. Pupil very small constricted not reaching to light. Diagnosis - left eye - case of Indocyclithis with Octuss. Remarks - such a disease of eye can occur without any injury. It could also occur if fase is trauma to the eye. From all these documents and circumstances it is clear that when the patient - appellant was hit by a particular foreign body which directly went in his left eye and ultimately in course of time he became totally blind. So far as the left eye is concerned it might be that foreign body was removed, but the effect of the accident has gradually cryptic over the patient making in blind in course of time. There is therefore direct nexus between the injury and disability. Dr.Deshmukh may have opined that such disease can occur without any injury and other doctors may have given name to the particular disease but so far as the workman compensation Acts

are concerned, what is required to be seen is whether the disability can be attributed tot he accident and I have no hesitation in concluding that there is direct relationship between disability and accident. It is not a co-incident that the Appellant has left his vision of the left eye by foreign body when he was working and disability occurred due to the said accident. The findings of the E.S.I. Court are therefore contrary to the facts and they are liable to be set aside and quashed. I already observed that provisions of ESI Act are required to be liberally construed and therefore the appeal is required to be allowed.

ORDER

. The impugned order of the E.S.I. Court, Pune dated 30-8-1996 in appeal (ESI) No.15 of 1980 is set aside and quashed. The application of the Appellant for compensation is allowed. Respondent no.2 to pay compensation as prayed for, with costs of this appeal.

(D.G.DESHPANDE, J)